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September 29, 2004

New Hampshire D.E.S. Water Council
c/o Mr. Michael Sclafini, Appeals Clerk
29 Hazen Drive
Concord, NH 03302

Re: *Docket No. 04-15 WC and Docket No: 04-17 WC - both Appeals concerning the 7/01/04 large groundwater withdrawal permit granted by DES to USA Springs, Inc.*

Gentlemen / Mesdames:

As legal counsel of record for the DES permit grantee, USA Springs, Inc., I am writing to object to what appears to be a violation of due process and unlawful communication involving a member of the Water Council. I am concerned that an active member of the Council has engaged in conduct that displays, or gives the appearance of, improper bias by him against my client USA Springs. The specific basis for this objection is detailed, as follows.

During the Water Council's public meeting in Concord on September 8, 2004, while on the subject of the USA Springs large groundwater withdrawal permit, Council member **James Varotsis** asked the Chair why were they waiting. He asked: "What is going on with this project? What is the company doing now? Where are they in the process? How much water are they taking out of the ground?"

Mr. Varotsis then displayed a copy of the recent USA Springs correspondence to the citizens of Nottingham and said "*some letter from the USA Springs CEO was sent out and I have no idea why I got it.*" Mr. Varotsis then degraded the correspondence saying "**it has no return address on it**" and, basically questioned the motives of the mailing. He said that every member of the Water Council should get a copy of this letter, that they need to really read it and went back to stating that they did not know where the process stood with the company and said "we don't even know how much they are pumping right now" (conversely, the letter had made clear that the applicant is nowhere near that stage).

Richard Killion then raised his hand and was called on by the Chair. After introducing himself by name and noting that he was a consultant to USA Springs, Mr. Killion stated that the letter which Mr. Varotsis had in his possession was sent by USA Springs only to Nottingham citizens; that the company would welcome the opportunity for the members to read it; in reading it they would find that there is a return address at the top of the first

page of the letter, adjacent to the company logo; that the purpose of the letter was to inform the citizens of the Town where the company was in the process (State approval in July and presently before the local Planning Board) stating that the letter informed the citizens of the date, time and location of the next Planning Board meeting.

At that point, Mr. Varotsis sat down and said that he did not intend for the letter to go into the public record, but that he just wanted fellow Water Council members to see it. However, Mr. Varotsis did not offer any explanation as to how he came into possession of the letter.

Ben Frost, Water Council member from the Office of State Planning, stated that since the letter was discussed during the meeting, it is already part of the public record and he saw no problem with it being included. The Chairman noted that -- until next meeting -- any documents are welcomed to be added to become part of the record.

In light of what transpired at the September 8, 2004 public meeting of the Water Council as indicated above, my client, USA Springs, objects to the violation of due process which has been designed to ensure that only proper communication be allowed in the process. Based on the unambiguous regulatory controls of sections (a), (b) & (c): Env-WC 202.05 entitled "**Communications with the Council**", it is clear that Water Council member James Varotsis received an item of communication by improper means, and therefore, specifically prohibited by law.

(a) All communications with the council shall be filed in accordance with Env-WC 202.03(b) and shall identify the name and address of the communicator and the subject matter of the communication. No person shall submit any documents or exhibits or otherwise communicate any other information pertaining either directly or indirectly to the subject matter of any pending appeal directly to any member of the council.

Furthermore, it is clear that Council member Varotsis failed to fulfill his legal duty to disclose the improper communication, upon having been supplied the letter by someone.

(b) Any member of the council receiving any direct communication from any person which pertains directly or indirectly to the subject matter of any pending appeal shall, at the next council meeting, notify the council chairman on the record of the improper communication and submit a copy of the same, or, if the communication was made orally, relate the substance of the communication to the council.

Finally, a Council member should not make comments into the public record about the contents of a document which has not been properly introduced into evidence or properly made a part of the record.

(c) No information shall be considered as evidence or made part of the record in any proceeding before council that is not introduced as evidence in accordance with Env-WC 203.

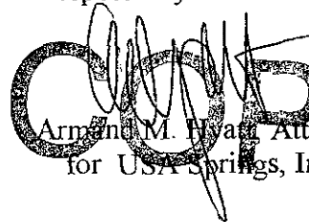
Letter to Water Council (9/29/04) Re: Docket Nos. 04-15 and 04-17 (page 3 of 3)

Accordingly, on behalf of my client, I hereby respectfully request that:

- (a) a copy of the audiotape or its transcript be provided to my office on behalf of my client, for which I will promptly submit the necessary cost reimbursement; and
- (b) Councilor Varotsis be instructed to recuse himself from participating whatsoever in any aspect of these proceedings which are before the Water Council.

Thank you for your consideration of this important matter.

Respectfully submitted,


Armando M. Hyatt, Attorney
for USA Springs, Inc.

cc: Richard W. Head, Assistant Attorney General
Anne M. Edwards, Assistant Attorney General
E. Tupper Kinder, Esquire
Mark E. Beliveau, Esquire
Bill McCann, S.O.G.